

STATE OF RHODE ISLAND  
HISTORICAL PRESERVATION & HERITAGE COMMISSION

HISTORIC PRESERVATION  
INVESTMENT TAX CREDIT

FINAL REGULATIONS

Adopted by the Commission on

May 8, 2002

ARTICLE I           GENERAL

Chapter 33.2 of Title 44 of the Rhode Island General Laws provides a special incentive to encourage the rehabilitation, redevelopment and reuse of Rhode Island's historic structures. This special incentive is a Rhode Island state income tax credit based on qualified rehabilitation expenditures incurred in the substantial rehabilitation of a certified historic structure.

The Act directs the Historical Preservation and Heritage Commission to administer the Act, including certification of the proposed rehabilitation of a certified historic structure and certification of the completed rehabilitation. The Commission is further directed to develop application and certification forms for certifying to the Department of Administration, Division of Taxation, whether the rehabilitation of a certified historic structure qualifies for the Historic Preservation Investment Tax Credit.

ARTICLE II           DEFINITIONS

These Regulations provide guidelines for the application process and the administration of the Historic Preservation Investment Tax Credit by the Commission. Definitions by the Commission set forth in these Regulations will be used in administering the Historic Preservation Investment Tax Credit.

1.     “Accountant's Certification” means the certification of a certified public accountant licensed in the State of Rhode Island containing the information required in the Application for a Certificate of Completed Work. The Accountant's Certification includes but is not limited to certification of the Adjusted Basis at the beginning of the Rehabilitation, Rehabilitation costs properly chargeable to capital account, and project costs incurred but not eligible for the Historic Preservation Investment Tax Credit such as costs for new construction and other costs not chargeable to capital account.

2. “Act” means Chapter 33.2 of Title 44 of the Rhode Island General Laws, as amended.

3. “Adjusted Basis” means the Owner’s basis in a structure, adjusted by depreciation and other adjustments that impact basis, computed in accordance with federal income tax law. In general, adjusted basis is determined with reference to the cost of the structure (excluding land) in the hands of the Owner at the time of acquisition, decreased by depreciation and other deductions that reduce basis, and increased by costs incurred in connection with the structure and chargeable to capital account, such as the cost of improvements to the structure.

4. “Allocation Agreement” means an executed agreement among all Participants of a Pass-Through Entity, or among all Owners of a structure having multiple owners, setting forth the method for allocation of the Historic Preservation Investment Tax Credit agreed upon among the Participants or Co-owners. An Allocation Agreement may include, without limitation, a partnership agreement, an operating agreement of a limited liability company, a shareholders agreement, or any other instrument executed by all Participants or Co-owners.

5. “Applicant” means a Person submitting an application for a Commission determination under Article IV hereof.

6. “Assignable Historic Preservation Investment Tax Credit Certificate” means a certificate issued by the Commission to the Owner of a Certified Historic Structure or an identifiable portion thereof who has incurred Qualified Rehabilitation Expenditures that have been approved by the Commission as consistent with the Standards for Rehabilitation, and which Qualified Rehabilitation Expenditures have been Placed in Service. If the Owner of the Certified Historic Structure is a Pass-Through Entity, an Assignable Historic Preservation Investment Tax Credit Certificate may be issued to each Participant in the Pass-Through Entity. The Certificate shall specify the amount of the Historic Preservation Investment Tax Credit allocable to such Participant, determined pursuant to this Regulation.

7. “Assignee” means an Initial Assignee or any other Person to whom the Historic Preservation Investment Tax Credit is assigned pursuant to this Regulation.

8. “Certified Historic Structure” means a structure which is located in the State of Rhode Island and is:

- (i) listed individually on the National Register of Historic Places;
- (ii) listed individually in the State Register of Historic Places; or
- (iii) located in a Registered Historic District and certified by either

the Commission or Secretary of the Interior as being of historic significance to the district.

9. “Certified Rehabilitation” means any Rehabilitation of a Certified Historic Structure consistent with the historic character of such structure or the district in which such structure is located as determined by the Commission in accordance with the Standards for Rehabilitation.

10. “Certificate of Completed Work” means the written approval issued by the Commission that the Rehabilitation is consistent with the Standards for Rehabilitation.

11. “Certification of Proposed Rehabilitation” means the Certification issued by the Commission that the proposed Rehabilitation is consistent with the Standards for Rehabilitation.

12. “Commission” means the Rhode Island Historical Preservation and Heritage Commission created pursuant to Section 42-45-2.

13. “Executive Director” means the Executive Director of the Commission.

14. “Exempt from Real Property Tax” means, with respect to any Certified Historic Structure, that the structure is exempt from taxation pursuant to Section 44-3-3 of the Rhode Island General Laws.

15. “Historic Preservation Certification Application” means Parts 1, 2 and 3 of the Commission’s application forms for each stage of the certification process, as more fully set forth herein.

16. “Holding Period” means twenty-four (24) months after the Commission issues a Certificate of Completed Work to the Owner. In the case of a phased Rehabilitation described in Section 44-33.2-2(10) of the Rhode Island General Laws, “Holding Period” shall be extended to include a period of time beginning on the date of issuance of a Certificate of Completed Work for the first phase or phases for which a Certificate is issued and continuing until the expiration of twenty-four (24) months after the Certificate of Completed Work issued for the last phase.

17. “Initial Assignee” means an assignee named by the Owner in its application for a Certificate of Completed Work.

18. “Inspection” means a visit by an authorized representative of the Commission to a property for the purposes of reviewing and evaluating the significance of the structure and the proposed, ongoing or completed Rehabilitation work.

19. “Measuring Period” means the 24-month period selected by the Owner ending within the taxable year in which a Certified Historic Structure is Placed in Service. In the case of a Rehabilitation which may reasonably be expected to be completed in phases set forth in architectural plans and specifications completed before the Rehabilitation begins, this definition shall be applied by substituting “sixty (60) month period” for “twenty-four (24) month period.”

20. “Notification of Assignment” means the notification filed with the Division of Taxation of the assignment of all or a portion the State Historic Preservation Investment Tax Credit.

21. “Owner” means a Person or Persons who hold legal fee or leasehold title to the historic structure or an identifiable portion thereof.

22. “Participant” means a partner in a partnership, member of limited liability company, shareholder of an S-corporation, beneficial owner of a trust, or any other Person having an interest in a Pass-through Entity.

23. “Pass Through Entity” means a partnership, limited liability company, S-corporation, association, nominee trust, or any other entity, the tax attributes of which are passed through to the Participants in such entity.

24. “Percentage Interest” means the Percentage Interest in the Historic Preservation Investment Tax Credit allocated to a Participant, a co-Owner of a multiple-Owner structure or identifiable portion thereof, or an Assignee pursuant to the terms of the applicable Allocation Agreement.

25. “Person” means any person, partnership, firm, corporation, (including both business and non-profit corporations), limited liability company, trust, estate, association, or other business entity.

26. “Placed in Service” means that Substantial Rehabilitation work has been completed which would allow for occupancy of the entire structure or some identifiable portion of the structure. Issuance of a certificate of occupancy or similar permit authorizing occupancy of the entire structure or some identifiable portion by the municipal authority having jurisdiction shall constitute sufficient evidence for purposes of the Act that the structure or the identifiable portion thereof that is the subject of the certificate of occupancy has been placed in service. However, a structure or identifiable portion thereof may be treated as Placed in Service without a certificate of occupancy if the structure or identifiable portion thereof is placed in a condition or state of readiness and availability for a specifically defined function, or upon the commencement of the period for depreciation with respect to the structure under the Owner’s depreciation practice, whichever occurs earlier.

27. “Qualified Rehabilitation Expenditures” means any amounts expended in the Rehabilitation of a Certified Historic Structure properly chargeable to capital

account for property, excluding personal property, which is of a character subject to federal depreciation allowance pursuant to 26 U.S.C. section 167 or 168.

28. “Registered Historic District” means any district listed in the National Register of Historic Places or the State Register of Historic Places.

29. “Rehabilitation” means the preservation of a historic building, its component elements, and its structural system by means of repairs and/or selective replacement of worn out materials and alterations to the building generally which are consistent with the building’s documented historic appearance without destroying historically significant later additions.

30. “Standards for Rehabilitation” or “Standards” means the United States Secretary of the Interior’s Standards for Rehabilitation.

31. “State Register of Historic Places” means the state register of historical, architectural, and cultural sites, buildings, places, landmarks, or areas compiled by the Commission pursuant to Rhode Island General Laws 42-45-5. Properties are listed on the State Register in accordance with the Commission’s Procedures for Registration and Protection of Historic Properties.

32. “Substantial Rehabilitation” means, with respect to a Certified Historic Structure, that the Qualified Rehabilitation Expenditures incurred with respect to the Certified Historic Structure during the twenty-four (24) month period selected by the Owner ending within the taxable year in which the Certified Historic Structure is Placed in Service exceed fifty percent (50%) of the Adjusted Basis in such building and its structural components as of the beginning of such period. In the case of any Rehabilitation which may reasonably be expected to be completed in phases set forth in architectural plans and specifications completed before the Rehabilitation begins, the above definition shall be applied by substituting “sixty (60) month period” for “twenty-four (24) month period”.

### ARTICLE III      TAX CREDIT

Section 1. General. A Person that incurs Qualified Rehabilitation Expenditures for the Substantial Rehabilitation of a Certified Historic Structure certified in accordance with these Regulations is entitled to a credit against the tax imposed on such Person pursuant to Chapter 11, 12, 13, 14, 17 or 30 of Title 44 of the Rhode Island General Laws. An Assignee of such Person may also claim the Credit in accordance with these Regulations.

Section 2. Amount of Credit. The Historic Preservation Investment Tax Credit is equal to thirty percent (30%) of the Qualified Rehabilitation Expenditures.

Section 3. When Claimed. The Historic Preservation Investment Tax Credit shall be claimed for the year in which the Certified Historic Structure or an identifiable portion thereof is Placed in Service.

Section 4. Minimum Expenditure. In order to qualify for the Historic Preservation Investment Tax Credit, an Owner must meet the Substantial Rehabilitation test.

#### ARTICLE IV      APPLICATION GUIDELINES.

##### Section 1. Certifications of Significance and Rehabilitation – General.

A. Application. Requests for designation of a structure as a Certified Historic Structure and of a proposed Rehabilitation shall be made on the Historic Preservation Certification Application forms. Part 1 of the Application, Evaluation of Significance, is used to request certification of historic significance. Part 2 of the application, Description of Rehabilitation, is used to request Certification of a proposed Rehabilitation as meeting the Standards for Rehabilitation. Part 2 of the application must be filed with the Commission prior to the Certified Historic Structure being Placed in Service. Part 3 of the application, Request for Certification of Completed Work, is used to request certification of a completed Rehabilitation project.

B. Forms. Application forms are available from the Commission at the Old State House, 150 Benefit Street, Providence, RI 02903; Tel: (401) 222-2678; website [www.rihpc.state.ri.us](http://www.rihpc.state.ri.us).

C. Coordination with Federal Filings. If the applicant also seeks to claim the federal Historic Rehabilitation Tax Credit, application may be made on Parts 1, 2 and 3 of the Historic Preservation Certification application used by the National Park Service, with such additional forms and certifications as may be requested by the Commission.

D. Commission Review. The Commission generally completes reviews of certification requests within 30 business days of receiving a complete, adequately documented application. Where adequate information is not provided, the Commission will notify the applicant of the additional information needed to complete the review. The Commission will adhere to this time period as closely as possible, but failure to complete a review within the designated period does not waive or alter any certification requirement or imply approval. Notwithstanding the foregoing, the Commission must issue a written determination either granting or denying a Certificate of Completed Work within 90 days after receipt of a complete, adequately documented application for a Certificate of Completed Work.

E. Commission Decisions; Reliance on Application. Certifications are only given in writing by the Executive Director or other duly authorized representative

of the Commission. Decisions with respect to certifications are made on the basis of the information contained in the application form and other available information. The Applicant's signature on any application form is a representation to the Commission that the facts contained therein are true and correct, and the Commission is entitled to rely thereon. If information comes to the attention of the Commission at any time up to and including the last day of the applicable Holding Period, that is materially inconsistent with representations made in an application, the Commission may deny the requested certification or revoke a certification previously given. Such denial or revocation may be appealed pursuant to the procedures set forth in Article IV, Section 6.

Section 2. Certification of Historic Significance.

A. Consultation. Any Owner may consult with the Commission to determine whether a property is a Certified Historic Structure.

B. Application for Certification of Historic Structure. The Applicant shall prepare Part 1 of the Historic Preservation Certification Application form according to the instructions accompanying the application, including:

1. Name and mailing address of the Owner and, if the Owner holds leasehold title to the structure or an identifiable portion thereof, the name and mailing address of the holder of the fee interest;
2. Name and address of the property;
3. Name of the historic district (if located in a historic district);
4. Current 35mm color photographs of the building and its site, showing exterior and interior features and spaces adequate to document the property's significance;
5. Brief description of the appearance of the property, including alterations, characteristic features, and estimated date(s) of construction;
6. Brief statement of significance, including a summary of how the property reflects the recognized historic values of any historic district in which it is located;
7. Map showing the location of the property; and
8. Signature of the Applicant.

C. Review of Application for Certification of Historic Structure.

1. Scope of Review. The Commission will determine if the property is:
  - (i) listed individually on the National Register of Historic Places; or
  - (ii) listed individually on the State Register; or
  - (iii) located in a registered historic district and is of historic significance to the district.
2. Physical Integrity. The Commission will determine if the property possesses sufficient physical integrity to convey its historical significance.
3. Multiple Buildings or Complex. For purposes of a determination of historic significance, properties containing more than one building, where the Commission determines that the buildings have been functionally related historically to serve an overall purpose, such as a mill complex or a residence and carriage house, will be treated as a single certified historic structure, whether the property is individually listed in the National Register of Historic Places or the State Register of Historic Places or is located within a registered historic district. Buildings that are functionally related historically are those which have functioned together to serve an overall purpose during the property's period of significance.
4. Determination of Significance to District. Properties within Registered Historic Districts will be evaluated to determine if they contribute to the historic significance of the district by application of the standards set forth in Section 3 of this Article IV.
5. Preliminary Determination of Eligibility for Listing a Structure. Owners of properties that are not listed on the National Register of Historic Places or the State Register of Historic Places may request a written opinion from the Commission as to whether the property meets the criteria for listing on the Register. Owners of properties that the Commission considers to be eligible for listing may apply for preliminary certification of their properties, pursuant to Section 3 of this Article IV. Preliminary certifications will become final, and the properties will become Certified Historic Structures, as of the date of listing on the National Register of Historic Places or the State Register. Issuance of preliminary certification does not obligate the Commission to nominate the property. Applicants proceed with Rehabilitation projects at their own risk; if the historic property is not listed prior to completion of the project, the preliminary certification will not become final.
6. Preliminary Determination of Eligibility for Registering a District. Owners of properties that are located in potential historic district may request a written opinion from the Commission as to whether the potential historic district meets the criteria for being listed as a Registered Historic District. Owners of properties located in districts that the Commission considers to be eligible for listing



may apply for preliminary certification of their properties, pursuant to Section 3. Applications for preliminary certification of buildings within eligible historic districts must show how the district meets the criteria for being listed as a historic district, and how the property contributes to the significance of that district, pursuant to Section 3 of this Article IV. Preliminary certifications will become final, and the properties will become Certified Historic Structures, as of the date of listing the district as a Registered Historic District. Issuance of preliminary certification does not obligate the Commission to nominate the potential district. Applicants proceed with Rehabilitation projects at their own risk; if the historic district is not listed as a Registered Historic District prior to completion of the project, the preliminary certification will not become final.

D. Application for Certification of Rehabilitation of Structures in Districts with Preliminary Historic Certification. Owners of properties that have received preliminary certifications may apply for certification of a proposed Rehabilitation, pursuant to Section 4 of this Article IV. Final certifications of Rehabilitations will be issued only for Certified Historic Structures.

Section 3. Standards for Evaluating Significance within Registered Historic Districts.

A. Evaluations of Significance. Some historic districts are resources whose concentration or continuity possesses greater historical significance than many of their individual component buildings and structures. These usually are documented as a group rather than individually. Accordingly, this type of documentation is not conclusive for the purposes of an evaluation of the significance of an individual component. The applicant shall supplement this documentation using Part 1 of the Historic Preservation Certification Application, providing information on the significance of the specific property, as set forth in Section 2(B) of this Article IV.

B. Standards for Evaluation. The Commission evaluates properties located within Registered Historic Districts to determine if they contribute to the historic significance of the district by applying the following standards:

1. A property contributing to the historic significance of a district is one which by location, design, setting, materials, workmanship, feeling, and association adds to the district's sense of time and place and historical development.
2. A property not contributing to the historic significance of a district is one which does not add to the district's sense of time and place and historical development; or one where the location, design, setting, materials, workmanship, feeling and association

have been so altered or have so deteriorated that the overall integrity of the building has been irretrievably lost.

3. Ordinarily buildings that have been built within the past 50 years shall not be considered to contribute to the significance of a district unless a strong justification concerning their historical or architectural merit is given or the historical attributes of the district are considered to be less than 50 years old.

C. If a nonhistoric surface material obscures a building's facade, it may be necessary for the Owner to remove a portion of the surface material before requesting certification so that a determination of significance can be made. After the material has been removed, if the obscured facade has retained substantial historic integrity and the property otherwise contributes to the significance of the historic district, it may be determined to be a Certified Historic Structure.

#### Section 4. Certifications of Rehabilitation.

A. Certification of Proposed Rehabilitation or of Completed Work. Applicants requesting certification of a proposed Rehabilitation shall comply with the procedures listed in Paragraph 1 below; Applicants requesting a Certificate of Completed Work shall comply with the procedures listed in Paragraph 2, below. A fee, described in Section 7, is charged by the Commission for reviewing all proposed, ongoing, and completed Rehabilitation work. No certification decisions shall be issued to any applicant until the applicable fee is received.

1. Part 2 – Application for Certification of Proposed Rehabilitation. An application for certification of a proposed Rehabilitation shall be submitted to the Commission prior to the Certified Historic Structure being placed in service. Applicants are strongly encouraged to request the Commission review before beginning a Rehabilitation project. To request review of a proposed Rehabilitation, the Applicant shall submit Part 2 of the Historic Preservation Certification Application form according to the instructions accompanying the application. This documentation includes but is not limited to:

- (i) Name and mailing address of the Owner and, if the Owner holds leasehold title to the Certified Historic Structure or an identifiable portion thereof, the name and mailing address of the holder of the fee interest;
- (ii) Name and address of the property;
- (iii) Photographs (35mm color format) of the property adequate to document the appearance of the structure, both on the interior and the exterior, and its site and environment before Rehabilitation;

- (iv) The Applicant's estimate of projected Qualified Rehabilitation Expenditures and of Adjusted Basis in the Certified Historic Structure as of the date of application;
- (v) Signature of the Applicant and, if the Applicant is not the holder of the fee interest in the Certified Historic Structure, the signature of the fee owner as to the Adjusted Basis in the Certified Historic Structure as of the date of application.

Other documentation, including but not limited to plans, specifications, surveys and/or structural reports may be required to evaluate rehabilitation projects. Where necessary documentation is not provided, review and evaluation will be delayed and a denial of certification may be issued on the basis of lack of information. Because the circumstances of each Rehabilitation are unique, certifications that may have been granted to other Rehabilitations are not specifically applicable and may not be relied on by Applicants as applicable to other projects.

2. Part 3 – Request for Certification of Completed Work. To request certification of a completed Rehabilitation, the Applicant shall submit Part 3 of the Historic Preservation Certification Application, "Request for Certification of Completed Work," according to the instructions accompanying the application, and provide documentation that the completed project is consistent with the work described in Part 2. This documentation includes but is not limited to:

- (i) Name and mailing address of the Owner and, if the Owner holds leasehold title to the Certified Historic Structure or an identifiable portion thereof, the name and mailing address of the holder of the fee interest;
- (ii) Name and address of the property;
- (iii) Photographs (35mm color format) of the property showing the completed Rehabilitation work, including exterior and interior features and spaces, sufficient to demonstrate that the completed work is consistent with the *Standards for Rehabilitation*. Photographic views after Rehabilitation should correspond with photographic views submitted in Part 2;
- (iv) Final costs attributed to the Rehabilitation;
- (v) Accountant's Certification of the actual Qualified Rehabilitation Expenditures attributed solely to the Rehabilitation of the Certified Historic Structure and the satisfaction of the Substantial Rehabilitation Test;

- (vi) The Placed in Service date; and
- (vii) Signature of the Applicant.

3. Certification by Commission of Proposed Rehabilitation. The Commission shall issue to the Applicant a written determination either denying or certifying the Proposed Rehabilitation within the timeframe described in Article IV, Section 1(D) hereof.

4. Certification of Completed Work by Commission. Within 90 days after the Commission's receipt of an application for Certification of Completed Work, the Commission shall issue to the Applicant (i) a written determination either denying or certifying the Rehabilitation (a "Certificate of Completed Work") and (ii) a certification of the amount of Historic Preservation Investment Tax Credit for which the Rehabilitation qualifies (an "Assignable Historic Preservation Investment Tax Credit Certificate" pursuant to the procedures of Article VII hereof.

B. Scope of Rehabilitation; Qualified Rehabilitation Expenditures. For purposes of Commission reviews and certification, a Rehabilitation project encompasses all work on the interior and exterior of the certified historic structure(s) and its site and environment, as well as related demolition, new construction or rehabilitation work that may affect the historic qualities, integrity, site, landscape features, and environment of the property. The Commission will determine if such work is consistent with the standards for Rehabilitation whether or not a Credit is claimed for those costs. However, only those costs that constitute Qualified Rehabilitation Expenditures may be included in the calculation of the Historic Preservation Investment Tax Credit. The Commission is entitled to rely on the Accountant's Certification regarding the Qualified Rehabilitation Expenditures actually incurred included with the Application without independent investigation.

1. All elements of the Rehabilitation project shall be consistent with the *Standards for Rehabilitation*. Portions of a project that are not in conformance with the Standards may not be exempted from review. In general, an Applicant undertaking a Rehabilitation will not be held responsible for rehabilitation work not part of the current project that occurred more than five years before the current project began, or Rehabilitation work not part of the current project that was undertaken by previous owners.

2. Consistency with the *Standards for Rehabilitation* will be determined on the basis of the application documentation and other available information by evaluating the property, as it existed before the beginning of the Rehabilitation.

C. Determination of Consistency with Standards for Rehabilitation. The Commission, on receipt of the complete application describing the Rehabilitation project, shall determine if the project is consistent with the *Standards for Rehabilitation*. If the project does not meet the Standards for Rehabilitation, the

Commission shall advise the Applicant of that fact in writing. Where possible, the Commission will advise the Applicant of necessary revisions to meet the Standards for Rehabilitation.

D. Changes after Determination. Once a proposed or ongoing project has been approved, substantive changes in the work as described in the application shall be brought promptly to the attention of the Commission by written amendment to the application to ensure continued consistency to the *Standards for Rehabilitation*.

E. Standards for Rehabilitation. The *Standards for Rehabilitation* are the criteria used to determine if a Rehabilitation qualifies as a Certified Rehabilitation. The intent of the *Standards for Rehabilitation* is to promote the long-term preservation of a property's significance through the preservation of historic materials, features and floor-plans. The *Standards for Rehabilitation* pertain to historic buildings of all materials, construction types, sizes, and occupancy and encompass the exterior and the interior of historic buildings. The Standards also encompass related landscape features and the building's site and environment, as well as attached, adjacent, or related new construction. To be certified, a Rehabilitation shall be determined by the Commission in its reasonable discretion to be consistent with the historic character of the structure(s) and, where applicable, the district in which it is located.

F. Application of Standards for Rehabilitation. The *Standards for Rehabilitation* shall be applied to specific Rehabilitation projects in a reasonable manner taking into consideration economic and technical feasibility.

1. A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
2. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.
3. Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.
4. Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.

5. Distinctive features, finishes and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.
6. Deteriorated architectural features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature should match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing architectural features must be substantiated by documentary, physical, or pictorial evidence.
7. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate shall be undertaken using the gentlest means possible.
8. Significant archeological resources affected by a project shall be protected and preserved. If these resources must be disturbed, mitigation measures shall be undertaken.
9. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.
10. New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

G. Quality of Materials and Work. The quality of materials, craftsmanship, and related new construction in a Rehabilitation project should be commensurate with the quality of materials, craftsmanship, and design of the Certified Historic Structure in question. This standard will be applied in a reasonable manner taking into account economic and technical feasibility. Certain treatments, if improperly applied, or certain materials by their physical properties, may cause or accelerate physical deterioration of historic buildings. Inappropriate Rehabilitation measures include, but are not limited to: excessively abrasive paint removal; improper masonry repointing techniques; improper exterior masonry cleaning methods; improper introduction of insulation where damage to historic fabric would result; and incompatible additions and new construction on historic

properties. In almost all situations, these measures and treatments will result in denial of certification.

H. Structural Matters. In certain limited cases, it may be necessary to dismantle and rebuild portions of a Certified Historic Structure to stabilize and repair weakened structural members and systems. In these cases, the Commission will consider this extreme intervention as part of a Certified Rehabilitation if:

1. The necessity for dismantling is justified in supporting documentation;
2. Significant architectural features and overall design are retained; and
3. Adequate historic materials are retained to maintain the architectural and historic integrity of the overall structure.

These standards will be applied in a reasonable manner taking into account economic and technical feasibility.

Section 5. All Available Information Used in Determination. The qualities of a property and its environment which qualify it as a Certified Historic Structure are determined taking into account all available information, including information derived from the physical and architectural attributes of the building; these determinations are not limited to information contained in the State Register of Historic Places nomination reports.

Section 6. Appeals.

A. Appeal Procedures. An Applicant may appeal any denial or revocation of certification. A request for an appeal shall be made in writing to the Commission, within 60 days of receipt of the decision which is the subject of the appeal. It is not necessary for the Applicant to present arguments for overturning a decision within this 60-day period. The Applicant may request an opportunity to meet with the Commission or a Sub-Committee thereof, but all information that the Applicant wishes the Commission to consider shall be in writing. The Commission shall consider the record of the decision in question, and further written submissions by the Applicant, and other available information, and shall provide the Applicant a written decision as promptly as circumstances permit. The appeal process is an administrative review of decisions made by an authorized representative of the Commission; it is not an adjudicative proceeding.

B. Decisions. In considering appeals, the Commission may take into account new information not previously available or submitted; alleged errors in professional judgement; or alleged prejudicial procedural errors. The Commission's decision may:

1. Reverse the appealed decision; or
2. Affirm the appealed decision; or
3. Resubmit the matter to the Commission program staff for further consideration.

C. Final Administrative Remedy. The decision of the Commission shall be the final administrative decision on the appeal. No person shall be considered to have exhausted his or her administrative remedies with respect to the certifications or decisions described in this part until the Commission has issued a final administrative decision in response to this section. The Commission shall notify the Rhode Island Division of Taxation in writing of any denial or revocation of a certification and of the final administrative decision on the appeal.

#### Section 7. Fees for Processing Rehabilitation Certification Requests.

A. Fees. Fees are charged for reviewing Rehabilitation certification requests. The Commission shall determine the schedule of fees, based on the dollar amount of the costs attributed to the Rehabilitation of the Certified Historic Structure. The initial fee schedule, effective as of the date of these Regulations is:

<u>Rehabilitation Costs</u>	<u>Fee</u>
\$500,000 or less	\$500
\$500,000 - \$1,000,000	\$1,000
\$1,000,000 and above	\$2,000

Regardless of size of project, \$500 shall be payable at the time of application for certification of a proposed Rehabilitation (Part 2), with the balance payable with the application for a Certificate of Completed Work (Part 3)

B. The Commission reserves the right to adjust the fee structure. A current schedule of fees may be obtained from the Commission.

C. Separate Projects. In general, each Rehabilitation of a separate Certified Historic Structure will be considered a separate project for purposes of computing the size of the fee. However, scattered site projects involving the simultaneous, coordinated Rehabilitation of multiple buildings identified in a



certification application as part of the same project shall be considered one project for purposes of calculating the fee.

ARTICLE V                      SUBSTANTIAL REHABILITATION; QUALIFIED  
REHABILITATION EXPENDITURES

Section 1.    Substantial Rehabilitation.

A.     A Rehabilitation of Certified Historic Structure shall be deemed a Substantial Rehabilitation only if the Qualified Rehabilitation Expenditures incurred in the 24-month period selected by the Owner ending within the taxable year in which the Rehabilitation is Placed in Service shall equal or exceed fifty percent of the Adjusted Basis of the Certified Historic Structure as of the beginning of the 24-month period. In the case of projects involving multiple buildings (except for phased Rehabilitations addressed in Section B below), the Substantial Rehabilitation Test must be met with respect to each building separately based on the Adjusted Basis attributable to each such building and the Qualified Rehabilitation Expenditures attributable to each such building. The 24-month period is a measuring period for testing whether the Rehabilitation is a Substantial Rehabilitation. Qualified Rehabilitation Expenditures incurred in connection with the Rehabilitation either before the beginning of the 24-month period or after the Rehabilitation is Placed in Service but prior to the end of the taxable year in which the Rehabilitation is Placed in Service may be included in the calculation of the Credit provided the Substantial Rehabilitation Test is met.

B.     In the case of any Rehabilitation that may reasonably be expected to be completed in phases set forth in architectural plans and specifications prepared before the physical work on the Rehabilitation begins, at the election of the Owner, paragraph (A) of this section may be applied by substituting “60 month period” for “24-month period.” A Rehabilitation may reasonably be expected to be completed in phases if it consists of two or more distinct stages of development. The Commission may review each phase as it is presented, and may issue a Certificate for Completed Work upon completion of each Phase. However, an Assignable Historic Preservation Investment Tax Credit Certificate may be issued only upon satisfaction of the Substantial Rehabilitation Test for the entire phased project. Thereafter, Assignable Historic Preservation Investment Tax Credit Certificates may be issued upon issuance of a Certificate of Completed Work for later phases without again having to meet the Substantial Rehabilitation Test. The Applicant may elect to claim the Credit allowable for each completed phase of a phased project, upon receipt from the Commission of an Assignable Historic Preservation Investment Tax Credit Certificate. Any Credit claimed prior to final certification of the completed Rehabilitation will be contingent upon final certification of the completed Rehabilitation.

C. Qualified Rehabilitation Expenditures are those expenses incurred in connection with a Substantial Rehabilitation of a Certified Historic Structure that are properly chargeable to capital account and of a character subject to federal depreciation allowance pursuant to 26 USC Section 167 or 168.

D. Amounts are properly chargeable to capital account if they are properly includible in computing the depreciable basis of real property under federal income tax law. Amounts treated as an expense and deducted in the year paid or incurred or amounts that are otherwise not added to the basis of real property do not qualify. Amounts incurred for soft costs, including without limitation architectural and engineering fees, survey fees, legal expenses, insurance premiums, development fees and other construction related costs that are added to the depreciable basis of real property satisfy this requirement.

E. Expenses that do not qualify as Qualified Rehabilitation Expenditures include, without limitation:

1. The cost of acquiring a building, an interest in a building (including a leasehold interest) or land. For this purpose, interest incurred on a construction loan, the proceeds of which are used for Qualified Rehabilitation Expenditures (and which is added to the basis of the Certified Historic Structure) is not treated as a cost of acquisition.

2. Any expense attributable to an enlargement of a building. A building is enlarged to the extent that the total volume of the building is increased. An increase in floor space resulting from interior remodeling is not considered an enlargement. If expenditures only partially qualify as Qualified Rehabilitation Expenditures because some of the expenditures are attributable to the enlargement of the building, the expenditures must be apportioned between the original portion of the building and the enlargement. The expenditures must be specifically allocated between the original portion of the building and the enlargement to the extent possible. If it is not possible to make a specific allocation of the expenditures, the expenditures must be allocated to each portion on a reasonable basis. The determination of a reasonable basis for an allocation depends on factors such as the type of improvement and how the improvement relates functionally to the building. Example: Historic Rehabilitation project includes a new rear wing. A new air-conditioning system and a new roof are installed on the building. A reasonable basis for allocating the expenditures between the historic building and the new rear wing generally would be the volume of the historic building (excluding the new wing), served by the air-conditioning system on the roof, relative to the volume of the new wing that is served by the air-conditioning system and the roof.

3. Any expense attributable to the rehabilitation of a Certified Historic Structure, or a building located in a Registered Historic District, which is not a Certified Rehabilitation.

4. Any site work expenses.
5. Any costs of demolition of adjacent structures.

F. Step in the Shoes. The Owner may take into account Qualified Rehabilitation Expenditures incurred in connection with the same plan of Rehabilitation by any other Person who has or had an interest in the building. Where Qualified Rehabilitation Expenditures are incurred with respect to a building by a Person (or Persons) other than the Owner, and the Owner acquires the building or a portion of the building (including a leasehold interest in the building or a portion thereof) to which the expenditures were allocable, the Owner acquiring such property will be treated as having incurred the Qualified Rehabilitation Expenditures actually incurred by the transferor, provided that (i) the Rehabilitation was not Placed in Service by the transferor and (ii) no Credit with respect to such Qualified Rehabilitation Expenditures is claimed by anyone other than the Owner acquiring the property or that Owner's Assignee(s). In such instances, the Measuring Period during which the Substantial Rehabilitation Test must be met shall include the transferor's period of ownership, and the Adjusted Basis against which Qualified Rehabilitation Expenditures are tested shall be the Adjusted Basis of the transferor as of the beginning of the Measuring Period.

## ARTICLE VI      DETERMINATION OF CREDIT

A. The amount of the Credit shall be determined by multiplying the total amount of Qualified Rehabilitation Expenditures incurred in connection with the plan of Rehabilitation times thirty percent. Qualified Rehabilitation Expenditures may include expenses in connection with the Rehabilitation which were incurred prior to the start of Rehabilitation or of the Measuring Period. Further, Qualified Rehabilitation Expenditures may include expenses incurred prior to completion of a formal plan of Rehabilitation provided the expenses were incurred in connection with the Rehabilitation which was completed.

B. The Commission shall certify the amount of Qualified Rehabilitation Expenditures in the Certificate of Completed Work. In the case of multiple building projects, a Certificate of Completed Work shall be issued for each building. The Certificate shall be signed by an authorized representative of the Commission confirming that the property to be rehabilitated is a Certified Historic Structure; that the Rehabilitation is a Certified Rehabilitation; and specifying the amount of Qualified Rehabilitation Expenditures, based on the Request for Certification of Completed Work.

C. The Commission shall also issue an Assignable Historic Preservation Investment Tax Credit Certificate as more fully provided in Article VII.

D. The Commission shall rely without independent investigation on the Accountant's Certification as to the amount of Qualified Rehabilitation

Expenditures actually incurred and the satisfaction of Substantial Rehabilitation Test.

E. If the amount of the Credit exceeds the taxpayer's tax liability for the taxable year in which the Credit may be claimed, the amount that exceeds the tax liability may be carried over for credit against the income taxes of such taxpayer for the next ten taxable years or until the full Credit is used, whichever occurs first.

## ARTICLE VII      ASSIGNMENT OF HISTORIC PRESERVATION INVESTMENT TAX CREDIT.

A. Issuance of Assignable Historic Preservation Investment Tax Credit Certificate to Owner, Initial Assignee, or Participant. Upon approval by the Commission of the Substantial Rehabilitation of a Certified Historic Structure pursuant to this Regulation, the Commission shall issue to the Owner or any Assignee (the "Initial Assignee") identified in the Owner's Application for a Certificate of Completed Work an Assignable Historic Preservation Investment Tax Credit Certificate. If the Owner or the Initial Assignee is a Pass-Through Entity, or if there are multiple Owners, the Commission may issue an Assignable Historic Preservation Investment Tax Credit Certificate to each Participant in such Pass-through Entity or each Owner, indicating on the face of such Certificate the amount of the Historic Preservation Investment Tax Credit allocable to such Participant. The amount assigned to each Participant will be the amount represented by the Applicant in the Application for a Certificate of Completed Work.

B. Determination of Amount of Credit allocated to Participants in Pass-Through Entities. The amount allocated to each Participant on the Assignable Historic Preservation Investment Tax Credit Certificate issued to such Participant must be either (i) in proportion to the number of Participants in the Owner or (ii) determined in accordance with any allocation method set forth in an executed agreement among all Participants, which may be without regarding to their sharing of other tax or economic attributes of such entity (the "Allocation Agreement"). The Commission shall have no obligation to confirm the amount stated for each Participant in the Application for Completed Work or to review the Allocation Agreement.

C. Assignment of Certificate. An Assignable Historic Preservation Investment Tax Credit Certificate may be assigned to any Person, whether or not such Person has an ownership interest in the Certified Historic Structure, provided that (i) no Credit has been claimed with respect to the Rehabilitation covered by the Certificate of Completed Work referenced in the Assignable Historic Preservation Investment Tax Credit Certificate and (ii) Substantial Rehabilitation has been achieved within the year in which the Certified Rehabilitation was Placed in Service. The Certificate may be assigned by endorsing the assignment clause set forth on the Certificate and delivery of the original certificate to the Assignee.

D. Assignee Recognition of Credit. The Assignee may use the Historic Preservation Investment Tax Credit only against the tax imposed for the taxable year in which the Certified Rehabilitation qualifies for the Historic Preservation Investment Tax Credit, or for taxable years to which the Credit is carried forward. An Assignee may carry forward unused Historic Preservation Investment Tax Credit for ten (10) years following the year that the Certified Rehabilitation qualifies for the Historic Preservation Investment Tax Credit or until the full Credit is used, whichever comes first.

E. Filing with Tax Return. An original executed copy of the Assignable Historic Preservation Investment Tax Credit Certificate shall be attached to the tax return of the Owner, Participant or Assignee who desires to claim the Credit. A Participant of a Pass-through Entity who transfers its interest in the entity must also endorse and deliver the Assignable Historic Preservation Tax Credit Certificate to the transferee if the transferee desires to claim the Historic Preservation Investment Tax Credit.

F. Notification of Assignment to Tax Division. An Assignor of all or any portion of the Historic Preservation Investment Tax Credit, shall notify the State of Rhode Island Division of Taxation in writing within 30 calendar days following the effective date of such assignment. Attached to such written notification (the “Notification of Assignment”) shall be:

1. A copy of the Assignable Historic Preservation Investment Tax Credit Certificate, endorsed to the Assignee. The original Certificate shall not be included with the Notification of Assignment, which must be retained by the Assignee and attached to the Assignee’s tax return for the year with respect to which the Historic Preservation Investment Tax Credit is claimed.
2. A copy of the Certificate of Completed Work issued by the Commission.
3. The name, address and telephone number of the Assignor and of the Assignee.
4. The taxpayer identification number or social security number of the Assignor and the Assignee.
5. For non-resident corporations, partnerships, limited liability companies, or other entities, the name and address of such entity’s registered agent in the State of Rhode Island and evidence of qualification to do business in Rhode Island.

G. Multiple Assignees; Reissuance of Certificate. If the holder of an Assignable Historic Preservation Investment Tax Credit Certificate desires to assign its interest in the Credit to more than one Assignee, the holder must request the Commission to reissue the original Certificate in such number of Certificates as the holder requires. The request must be made in writing, must specify the number of new Certificates required and the amount to be specified on each Certificate, and must attach the Original Certificate for cancellation by the Commission.

H. Treatment of Proceeds of Assignment for State Tax Purposes. The Assignor of all or a portion of the Historic Investment Tax Credit shall not recognize any state income tax under the provisions of Title 44 of the Rhode Island General Laws with respect to the proceeds of such assignment. The Assignor of any Credit shall attach a copy of the Assignable Historic Preservation Investment Tax Credit Certificate to its tax return to evidence that such proceeds are not subject to state income tax.

I. Administrative Fees. The Commission may assess reasonable administrative fees for issuing multiple Assignable Historic Preservation Investment Tax Credit Certificates or for reissuing Certificates.

## ARTICLE VIII      RESTRICTIVE COVENANT; RECAPTURE

Section 1. Restrictive Covenant. Upon issuance of a Certificate of Completed Work, the Owner shall cause to be recorded in the applicable land evidence records a restrictive covenant pursuant to which (i) during the Holding Period, no alteration to the Certified Historic Structure will be made without the Commission's approval and in a manner consistent with the Standards for Rehabilitation, (ii) the Certified Historic Structure may not become Exempt from Real Property Tax, and (iii) the Commission shall be granted the right to one or more Inspections during the Holding Period to confirm matters represented in the Historic Preservation Certification Application and to review any alterations. If the Owner is the holder of leasehold title, the fee owner of the Certified Historic Structure must also execute the Restrictive Covenant.

Section 2. Recapture. No Credit may be claimed with respect to property that is Exempt from Real Property Tax. Any Credit claimed under the Act shall be recaptured in full if, within 24 months after the Rehabilitation is Placed in Service, the property becomes Exempt from Real Property Tax. The Assignor, if any, of any recaptured Credit shall recognize income in the amount of the proceeds of the assignment upon any recapture of the Credit. Recapture of the Credit may be appealed to the Commission in accordance with Article IV, Section 6. The Commission shall notify the Rhode Island Division of Taxation of any recapture of the Credit and of the final administrative decision on any appeal.

## ARTICLE IX MISCELLANEOUS

Section 1. Examination of Records – Tax Division. The Tax Administrator and his or her agents, for the purpose of ascertaining the correctness of any Credit claimed under the Act, may examine any books, paper, records or memoranda bearing upon the matters required to be included in the return, report or other statement, and may require the attendance of the Person executing the return, report or other statement, or of any officer or employee of any taxpayer, or the attendance of any other Person, and may examine the Person under oath respecting any matter which the Tax Administration or his or her agent deems pertinent or material in determining eligibility for Credits claimed.

Section 2. Commission's Inspection Rights. The Commission shall have the right at reasonable times to enter upon any property that is the subject of an application for certification, whether the Rehabilitation is proposed, ongoing, or completed, and for the entire Holding Period following issuance of a Certificate of Completed Work, to verify that the Rehabilitation is as represented and that no unpermitted alterations or changes are made after issuance of a Certificate of Completed Work.

Section 3. Election Among Credits. Taxpayers who elect to claim Credits under the Act are ineligible for any tax credits that may also be available to the taxpayer for the Rehabilitation of that particular Certified Historic Structure under Chapter 44-33.1 or Chapter 42-64.7.

## ARTICLE X EFFECTIVE DATE AND TRANSITION RULES

Section 1. Effective Date. The Act is effective as of January 1, 2002. Until such time as the Act is amended, the Historic Preservation Investment Tax Credit may not be claimed with respect to Qualified Rehabilitation Expenditures incurred prior to January 1, 2002.

Section 2. Applicants whose Rehabilitation projects commenced before January 1, 2002, but were not completed until after January 1, 2002, may apply for certification of their Rehabilitation in accordance with these Regulations. In these cases, the Historic Preservation Investment Tax Credit may be claimed only with respect to expenditures incurred after January 1, 2002.

Section 3. For Rehabilitation projects commenced prior to January 1, 2002 but Placed in Service after January 1, 2002, the Measuring Period for determining if the Rehabilitation is a Substantial Rehabilitation may include Qualified Rehabilitation Expenditures incurred prior to January 1, 2002 provided that the Measuring Period ends after January 1, 2002.